

JAMES DAL BON  
CA BAR #157942  
DAL BON AND WANG  
12 S FIRST STREET #613  
SAN JOSE, CA 95113  
(408)292-1040

ATTORNEY FOR PLAINTIFF

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

C07 06047

Case No.

FRANCISCO MAYA,

Plaintiff,

vs.

PCI CONSTRUCTION INC., HAMID

ADLPARVAR and DOES 1-10

Defendants

COMPLAINT FOR DAMAGES AND  
DEMAND FOR JURY TRIAL:

- 1) Violation of California Labor Code Section 510;
- 2) Violations of the Federal Fair Labor Standards Act;
- 3) Violation of California Business and Professions Code Section 17200; and
- 4) Violation of California Labor Code Section 201; and
- 5) Violation of California Labor Code Section 226.

**NATURE OF CLAIM**

1. This is an action on behalf of FRANCISCO MAYA who had been employed on an hourly basis by PCI CONSTRUCTION INC. and HAMID ADLPARVAR during the last four years prior to the filing of this Complaint, seeking damages arising from employer's failure to pay overtime as required by the Fair Labor Standards Act and the California Wage Orders and statutes. Plaintiff seeks compensatory damages for unpaid wages under California Labor Code and Wage Orders, liquidated damages under 29 U.S.C. §216(b), waiting time penalties under California Labor Code § 203, damages for inadequate pay

1 statements under California Labor Code Section 226, and attorney's fees, costs, pre  
2 judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. § 216(b),  
3 and restitution under California Unfair Trade Practices Act under California Business and  
4 Professions Code § 17203.

### 5 **PARTIES**

- 6 2. At all times relevant herein, Plaintiff FRANCISCO MAYA is an individual resident of  
7 San Jose, California.
- 8 3. At all times relevant herein, Defendant PCI CONSTRUCTION INC., is a corporation  
9 having its principal place of business in Los Altos, California.
- 10 4. At all times relevant herein, Defendant HAMID ADLPARVAR is an individual doing  
11 business in Los Altos, California.
- 12 5. Individual Defendants DOES 1-10, at all times relevant herein, are, according to  
13 information and belief, owners, managers, directors, associates, related to, or employees  
14 of PCI CONSTRUCTION INC., having control over the Plaintiff's work condition and  
15 work situation.

### 16 **GENERAL ALLEGATIONS**

- 17 6. At all times relevant herein, Plaintiff was an employee of defendants PCI  
18 CONSTRUCTION INC., and HAMID ADLPARVAR doing business as a construction  
19 company in Los Altos, California.
- 20 7. Plaintiff was according to information and belief, an employee of Defendants acting in  
21 the normal course and scope of employment duties with Defendants.
- 22 8. During the course of Plaintiff's employment with PCI CONSTRUCTION, INC., Plaintiff  
23 regularly worked in excess of 8 hours per day and more than 40 hours per week.
- 24 9. Plaintiff was paid on a salary basis.
- 25



1 10. Plaintiff did not perform "exempt" duties in his position as a construction worker with  
2 PCI CONSTRUCTION, INC. and thus was not subject to any exemption under the Fair  
3 Labor Standards Act, *29 CFR 541.112, 541.209 and 541.209*. The Plaintiff was not even  
4 marginally responsible for management or administrative functions, and his primary job  
5 did not require him to exercise independent discretion and judgment or regularly require  
6 invention or imagination in a recognized field of artistic endeavor more than fifty percent  
7 of his working time.

8 11. At no time during the Plaintiff's employment did Plaintiff maintain any professional  
9 license with the state or practice any recognized profession, nor did Plaintiff exclusively  
10 manage any division of PCI CONSTRUCTION, INC. where he customarily and  
11 regularly exercised discretionary powers or perform services of management. Plaintiff  
12 did not directly supervise any employees nor did he participate in the development of  
13 general administrative policies of PCI CONSTRUCTION, INC.

14 **COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510**

15 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

16 12. Plaintiff re-alleges and incorporates paragraphs 1-10 as if fully stated herein.

17 13. California Labor Code Section 501, applicable at all times relevant herein to Plaintiff's  
18 employment by Defendants, provides that all employees are entitled to payment at the  
19 rate of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and  
20 double time for hours in excess of 12 in one day.

21 14. During the course of employment with Defendants, Plaintiff regularly worked in excess  
22 of 8 hours a day and 40 hours per week, however Defendant's knowingly and willingly  
23 failed to pay Plaintiff overtime wages as required by law.  
24  
25

1 15. California Labor Code Section 1194 provides that it is unlawful for employers not to  
2 make the required overtime payments identified in the preceding paragraph and that  
3 employees not paid such payments can recover any monies owed by civil action.

4 16. Defendants therefore owe Plaintiff overtime wages not properly paid to Plaintiff in an  
5 amount to be determined at trial.

6 17. Defendants have failed and refused and continue to fail and refuse to pay Plaintiff the  
7 amount owed.

8 18. Defendants' failure to pay Plaintiff the required sum violates the provisions of Labor  
9 Code Sections 510 and 1194 and is therefore unlawful.

10 19. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award Plaintiff  
11 reasonable attorney's fees and costs incurred by him in this action.

12 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

13 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

14 20. Plaintiff re-alleges and incorporates paragraphs 1-19 as if fully stated herein.

15 21. At all relevant times herein, Plaintiff's employment was subject to the provisions of the  
16 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and  
17 Plaintiff was an individual employee covered by virtue of Plaintiff's direct engagement in  
18 interstate commerce.

19 22. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work  
20 performed in excess of forty hours per week, unless specifically exempted by the law.

21 23. Although Plaintiff was not so exempt during employment with PCI CONSTRUCTION,  
22 INC., and HAMID ADLPARVAR defendants knowingly caused and permitted Plaintiff  
23 to regularly work in excess of forty hours per week without paying Plaintiff one and one  
24 half of Plaintiff's regular rate of pay.  
25



- 1 24. By not paying overtime wages in compliance with the FLSA, defendants violated  
2 Plaintiff's rights under the FLSA.
- 3 25. As a direct and proximate result of defendants' failure to pay proper wages under the  
4 FLSA, Plaintiff incurred general damages in the form of lost overtime wages.
- 5 26. Defendants intentionally, with reckless disregard for their responsibilities under the  
6 FLSA, and without good cause, failed to pay Plaintiff proper wages, and thus defendants  
7 are liable to Plaintiff for liquidated damages in an amount equal to lost overtime wages,  
8 pursuant to 29 U.S.C. § 216(b) of the FLSA.
- 9 27. Defendants therefore owe Plaintiff overtime not properly paid to Plaintiff, in an amount  
10 to be determined at trial.
- 11 28. Plaintiff was required to retain legal assistance in order to bring this action and, as such,  
12 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the  
13 FLSA.

14 **COUNT THREE: VIOLATION OF CA LABOR CODE SECTION 201**

15 **FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES**

- 16 29. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-28 as if fully stated  
17 herein.
- 18 30. At the time Plaintiff's employment with PCI CONSTRUCTION, INC. and HAMID  
19 ADLPARVAR was terminated, defendant's owed Plaintiff certain unpaid overtime  
20 wages in amounts previously alleged.
- 21 31. Failure to pay wages owed at an employee's termination as required by Labor Code §201  
22 subjects the employer the payment of a penalty equaling up to 30 days wages, as  
23 provided for in Labor Code § 203.  
24  
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1 32. As of this date, Defendants have failed and refused, and continue to fail and refuse, to  
2 pay the amount due, thus making defendants liable to Plaintiff for penalties equal to thirty  
3 (30) days wages, in an amount to be determined at trial.

4 33. Pursuant to Labor Code Section 218.5, Plaintiff requests that the court award Plaintiff  
5 reasonable attorney's fees and costs incurred in this action.

6 34. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest on  
7 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),  
8 accruing from the date the wages were due and payable.

9 **COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE**

10 **SECTION 17200 UNFAIR BUSINESS PRACTICES**

11 35. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-34 as if fully stated  
12 herein.

13 36. At all times relevant herein, Plaintiff's employment with PCI CONSTRUCTION, INC.  
14 and HAMID ADLPARVAR was subject to the California Labor Code and applicable  
15 Wage Orders promulgated by the California Industrial Welfare Commission, which  
16 required all employees to be paid overtime for work performed in excess of forty hours  
17 per week or eight hours per day, unless specifically exempted by law.

18 37. At all times relevant herein, as the employer of Plaintiff, defendants were subject to the  
19 California Unfair Trade Practices Act (California Business and Professions Code §  
20 §17000 et seq.), but failed to pay the Plaintiff overtime pay as required by applicable  
21 California Labor Code and applicable Wage Orders.

22 38. During the period Plaintiff was employed with PCI CONSTRUCTION, INC., and  
23 HAMID ADLPARVAR defendants failed to pay Plaintiff legally required overtime pay  
24 to which he was legally entitled, with defendants keeping to themselves the amount  
25 which should have been paid to Plaintiff.



- 1 39. In doing so, defendants violated California Unfair Trade Practices Act, Business and  
2 Professions Code §17200, et seq. by committing acts prohibited by applicable California  
3 Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a  
4 competitive advantage over other employers and businesses with whom defendants were  
5 in competition and who were in compliance with the law.
- 6 40. As a direct and proximate result of defendants' violations and failure to pay the required  
7 overtime pay, the Plaintiff's rights under the law were violated and the Plaintiff incurred  
8 general damages in the form of unpaid wages in an amount to be determined at trial.
- 9 41. Defendants had been aware of the existence and requirements of the Unfair Trade  
10 Practices Act and the requirements of State and Federal wage and hour laws, but  
11 willfully, knowingly, and intentionally failed to pay Plaintiff overtime pay due.
- 12 42. Plaintiff, having been illegally deprived of the overtime pay to which he was legally  
13 entitled, herein seeks restitution of such wages pursuant to the Business and Professions  
14 Code §17203 in an amount to be determined at trial.

15 **COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

16 **INADEQUATE PAY STATEMENTS**

- 17 43. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-42 as if fully stated  
18 herein.
- 19 44. California Labor Code Section 226 provides that all employers shall provide to  
20 employees accurate and complete wage statements including, but not limited to, an  
21 accurate and current statement of all rates paid for all regular and overtime hours worked  
22 during the pay-period, a complete and itemized statement of deductions, net wages  
23 earned, the dates for which payment is being made, any and all applicable piece rates, and  
24 the current address and name of the employer.
- 25

1 45. California Labor Code Section 226 further provides that any employee suffering injury  
2 due to a willful violation of the aforementioned obligations may collect the greater of  
3 either actual damages or 50\$ for the first inadequate pay statement and 100\$ for each  
4 inadequate statement thereafter.

5 46. During the course of Plaintiff's employment, defendants consistently failed to provide  
6 plaintiff with adequate pay statements as required by California Labor Code §226.

7 47. Defendants failed to provide such adequate statements willingly and with full knowledge  
8 of their obligations under Section 226.

9 48. Defendants' failure to provide such adequate statements has caused injury to the plaintiff.

10 49. Plaintiff is therefore legally entitled to recover actual damages caused by defendants'  
11 failure to provide proper records, in an amount to be determined at trial.

12 50. Plaintiff has incurred costs and fees in bringing this action and seeks to recover such  
13 costs under California Labor Code §226.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff prays for the following relief:

16 51. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an  
17 amount to be determined;

18 52. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount to be  
19 determined at trial;

20 53. For restitution of unpaid overtime pay pursuant to California Business and Professions  
21 Code §17203 in an amount to be determined at trial;

22 54. For waiting time penalty damages of thirty days wages to Plaintiff, pursuant to California  
23 Labor Code § 203 in an amount to be determined at trial;

24 55. Damages and penalties for inadequate pay statements pursuant to California Labor Code  
25 Section 226 in an amount to be determined at trial;



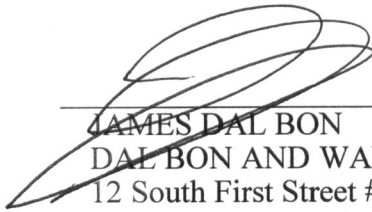
1 56. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid  
2 salaries pursuant to California Labor Code §1194(a);

3 57. Plaintiff asks the court to award reasonable attorney's fees pursuant to California Labor  
4 Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

5 58. For costs of suit herein; and

6 59. For such other and further relief as the Court may deem appropriate.  
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13 November 20<sup>th</sup>, 2007  
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) Case No:

) DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

  
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